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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**

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14 FREDERICK RONALD THOMAS, JR.,
15 individually and as successor-in-interest of
KELLY JAMES THOMAS, deceased,

16 Plaintiff,

17 vs.

18 CITY OF FULLERTON; MICHAEL
19 SELLERS, Chief of Police individually and
as a peace officer; PATRICK McKINLEY;
20 MANUEL ANTHONY RAMOS Badge
Number Unknown, individually and as a
21 peace officer; JOSEPH WOLFE Badge
Number Unknown, individually and as a
22 peace officer; JAY PATRICK CICINELLI
Badge Number Unknown, individually and
as a peace officer; KENTON HAMPTON
23 Badge Number 1337, individually and as a
24 peace officer; JAMES BLATNEY Badge
Number Unknown, individually and as a
25 peace officer; SGT. KEVIN CRAIG Badge
Number Unknown, individually and as a
26 peace officer; and DOES 1-50, inclusive,

27 Defendants.
28

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 05 2012

ALAN CARLSON, Clerk of the Court

Case No.:

30-2012

00581299

COMPLAINT FOR DAMAGES

Assault and Battery

Negligence

Wrongful Death

Violation of Civil Rights
(42 U.S.C. § 1983)

Supervisor Liability
(42 U.S.C. § 1983)

Monell Claim
(42 U.S.C. § 1983)

Violation of State Civil Rights
(Cal. Civ. Code § 51.7)

DEMAND FOR JURY TRIAL

JUDGE KIRK H. NAKAMURA

Dept. C8

(Amount demanded exceeds \$25,000)

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2. Venue is proper in this Court because the parties reside in, and all incidents, events and occurrences giving rise to this action occurred in, the County of Orange, California.

PRELIMINARY ALLEGATIONS

5. On July 5, 2011 at approximately 8:23 p.m. Plaintiff's son KELLY, a lifelong resident of the City of Fullerton, who was shirtless, wore long pants, slippers and a backpack, was detained by Defendant RAMOS to investigate a call regarding a "homeless" man looking in car windows and pulling door handles of parked cars. At the beginning of his contact with KELLY, RAMOS displayed his baton at KELLY by swinging it repeatedly in front of KELLY. Although KELLY already denied that he was the suspect they were looking for, Defendant RAMOS, who is soon joined by Defendant WOLFE, began to taunt and thereby confuse KELLY about whether he spoke foreign languages. Even after KELLY had given his name, Defendant RAMOS harassed and

1 confused KELLY by repetitively asking KELLY the same questions while claiming to
2 forget KELLY's name. RAMOS continued to harass, frustrate and confuse KELLY by
3 repetitively asking KELLY questions about whether he was pulling on car doors which
4 KELLY had already denied. RAMOS knew or should have known that KELLY was
5 mentally ill, and did indicate that he knew KELLY from prior encounters, stating "it
6 seems like every day, we have to talk to you about somethin' ... do you enjoy it?"
7 During the detention, KELLY allowed Defendant WOLFE to search his backpack by
8 giving it to WOLFE, and then KELLY sat down on the curb at Defendant RAMOS'
9 command. Neither RAMOS nor WOLFE patted KELLY down for weapons and both
10 RAMOS and WOLFE behaved in a manner consistent with the belief that KELLY did
11 not pose any risk of harm or flight. Indeed, KELLY was unarmed and posed no threat to
12 the officers' safety or to others.

13 6. During WOLFE's search of KELLY's backpack, WOLFE found some mail
14 addressed to an attorney named "Casey Hull" and wondered whether the letters were
15 stolen. Neither WOLFE nor RAMOS asked KELLY how he got the letters. RAMOS
16 walked away from KELLY and told WOLFE that they should take KELLY for "496" as
17 they "get a call on him every night." ("496" refers to the California Penal Code section
18 for "receiving stolen property.")

19 7. At this, RAMOS walked back toward KELLY, made a show of putting
20 gloves on his hands, and with increasingly aggressive language, began ordering KELLY
21 to put his feet in front of him and to put his hands on his knees. KELLY was confused by
22 RAMOS' orders and said: "which one is it dude? ... I can't do both." RAMOS did not
23 advise KELLY that he was being placed under arrest, and RAMOS did not advise
24 KELLY what crime RAMOS was arresting him for. In fact, KELLY had committed no
25 crime, and the attorney's mail in his backpack were items he found in the trash. Instead,
26 RAMOS threatened KELLY with physical harm and said: "Now you see my fists? ...
27 They're getting ready to fuck you up." While KELLY was still saying that he did not
28 understand RAMOS' commands, RAMOS struck KELLY'S neck and shoulder, which

1 caused KELLY to stand and step away from RAMOS with both hands up, open palms
2 facing RAMOS, in the universally recognized signal of surrender. RAMOS immediately
3 took his baton out and began ordering KELLY to get on the ground. Even though
4 KELLY was merely standing with his hands up, and without giving KELLY time to
5 comply, WOLFE quickly approached KELLY with his baton at the ready, and
6 immediately swung it with full force, striking KELLY. At this, KELLY began to run, to
7 escape from what he undoubtedly knew was not an arrest, but a beating.

8 8. For the next 9 minutes and 40 seconds, the defendant police officers,
9 including RAMOS, WOLFE, CICINELLI and HAMPTON continued to beat KELLY
10 with their batons, hands, elbows, fists, knees and a Taser gun, even while KELLY
11 repeatedly apologized and said "I'm sorry" at least 15 times and said "okay" at least 30
12 times as he tried to comply and begged for help. Even though KELLY repeatedly told
13 the officers at least 8 times that he could not breathe, the officers ignored him and
14 continued to place their combined body weight on top of KELLY's body. Even though
15 KELLY could have been restrained with the use of less than lethal control holds and
16 handcuffs, the defendant officers, and each of them, used deadly force by striking
17 KELLY repeatedly in the head and face, causing multiple facial and nose fractures.
18 Despite the fact that KELLY was on the ground with several officers on top of him,
19 Defendants agreed to use and CICINELLI did use his Taser gun to apply painful
20 electrical shocks into a terrified KELLY. Defendants and each of them, ignored the 12
21 times KELLY said "please" and "please sir", and the 26 times he asked for help.
22 Defendant WOLFE used his elbow at least twice to strike KELLY on the face.
23 Defendant CICINELLI struck KELLY repeatedly in the face with his Taser gun, and by
24 his own admission, "smashed his face to hell." KELLY knew that the officers intended
25 to hurt him and he called out at least 31 times for his dad to rescue him. Indeed, KELLY
26 uttered "Dad, they're killing me Dad," while he lay bleeding on the ground and drowning
27 in his blood.

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1 9. In doing the acts and omissions alleged in this Complaint, Defendant police
2 officers pursued an unprivileged course of extreme and outrageous conduct directed at
3 KELLY, with the intent to cause KELLY to suffer extreme terror, fear, shock, anxiety,
4 remorse, mental anguish, despair and emotional distress. Defendants committed these
5 outrageous acts and omissions with the intent to terrorize KELLY, and place him in fear
6 for his life and to experience other very highly unpleasant emotions.

7 10. KELLY did not die immediately, but he was in respiratory distress when
8 paramedics transported him to St. Jude Medical Center and then to UC Irvine Medical
9 Center for medical treatment, where he was diagnosed with significant facial trauma
10 including multiple nasal fractures with significant bleeding and swelling, left cheekbone
11 fracture, swollen black eyes and a hemorrhaged left eye, facial and lip lacerations,
12 contusions and abrasions. He also had left and right rib fractures and multiple bruises,
13 abrasions and swelling all over his body. He was found with severe metabolic acidosis,
14 hemorrhagic shock, and aspiration of blood into his lungs. MRI scans showed he had
15 suffered a diffuse anoxic brain injury. He remained hospitalized until his death on July
16 10, 2011.

17 11. The Orange County Coroner's Office ruled KELLY's death to be a homicide
18 and that his injuries occurred during the physical altercation with law enforcement
19 officers.

20 12. The Orange County District Attorney, Anthony Rackauckas, filed criminal
21 charges against Defendants RAMOS and CICINELLI who have been ordered to stand
22 trial for the murder of KELLY THOMAS. At the time of this filing, Plaintiff is informed
23 and believes that criminal charges against the other officers are still under review.

24 13. At all times material hereto, Defendants, and each of them, knew that
25 KELLY was mentally ill and was homeless as a result. Despite the CITY's knowledge
26 and awareness that its police officers had daily encounters with the mentally ill and
27 homeless population in its city, the CITY did not and otherwise failed to obtain, provide
28 and utilize resources available to it in order to properly train its police officers, including

1 the individual Defendant officers, on how to deal with persons who are homeless and
2 with mental illness during encounters with police.

3 14. The murder of KELLY THOMAS was the inevitable result of the culture of
4 corruption and deliberate indifference within the City of Fullerton Police Department.
5 The City's police department has a longstanding reputation of running roughshod on its
6 citizens' constitutional rights, ignoring citizen complaints and issuing no discipline to
7 officers accused of wrongdoing. The CITY has a long history of ignoring its officers'
8 abusive practices and is deliberately indifferent to the violations of constitutional rights
9 resulting from the CITY's customs, practices and policies. It fails to monitor and
10 supervise its officers' violations of written policies including officers who do not report
11 their use of force, and officers who do not document their contact with citizens by turning
12 off their Digital Audio Recorder (DAR). It condones its police officers' aggressive
13 practices of arresting citizens without probable cause, using "cover up" offenses such as
14 "resisting arrest" or "drunk in public" and using arrests as punishment for citizens'
15 exercise of their First Amendment rights which its officers instead perceive as "contempt
16 of cop."

17 15. Over time, these unconstitutional practices were considered standard
18 operating procedure such that, wrongful arrests went unquestioned and were presumed
19 lawful, and uses of force went unreported and not investigated. Allegations of
20 misconduct were routinely ignored, and witnesses not favorable to the fellow officer are
21 not interviewed nor documented. With the knowledge that their actions are not
22 scrutinized, Fullerton officers are thereby encouraged to behave with impunity and to act
23 without regard to protecting citizens' rights, and to file false, fabricated and misleading
24 reports and to offer perjurious testimony designed to justify their abuses including false
25 arrests and/or the excessive use of force.

26 16. Due to the publicity that has focused attention onto the CITY and its Police
27 Department, several recent examples of the CITY's and its Department's unconstitutional
28 policies and customs which have resulted in constitutional violations have come to light:

1 a. In 2008, Defendants knew of at least seven female victims of sexual
2 assault and battery by Fullerton officer Albert Rincon and did not terminate his
3 employment until after a federal lawsuit exposed Defendants' deliberate
4 indifference to the victims by its utter failure to supervise, monitor and discipline
5 Rincon. Defendants acted only after a federal district court judge, who had
6 examined the evidence, issued a scathing opinion against the CITY and its police
7 department for its "total" "failure to sufficiently enforce the DAR and pat-down
8 policies" because Rincon's complete disregard of mandatory department policy
9 "went completely undetected, or deliberately ignored" by the CITY; that the
10 CITY's "failure to investigate or punish sexual harassment allegations" despite the
11 "sheer volume of incidents" combined with the CITY's "most shocking" and
12 "weak" "reprimand" of Rincon in response to the citizen allegations, demonstrated
13 that the CITY was "complicit" in Rincon's sexual assaults on women he arrested,
14 and "that the City did not care about what its officers did to women during arrest."
15 Initially the CITY denied liability and forced the lawsuit to be filed, but one week
16 after the district court's finding, the CITY settled the civil case and only then,
17 finally made a move to terminate Rincon's employment.

18 b. On August 17, 2008, several Fullerton officers including Officer Perry
19 Thayer and Officer Anthony Diaz, assaulted, battered and terrorized Christopher
20 Spicer-Janku and filed a false arrest report claiming that Mr. Spicer-Janku was
21 "drunk in public." No charges were filed. Although Mr. Spicer-Janku filed a
22 personnel complaint against the officers, Mr. Spicer-Janku never received any
23 response from the CITY as to whether it even investigated the officers involved.

24 c. From at least 2010, despite Defendants' knowledge that Fullerton
25 officer Vincent Mater had a propensity for falsifying evidence and testimony,
26 Defendants continued to retain and employ Officer Mater. Defendants continued
27 to retain and employ Officer Mater despite the fact he was on the district attorney's
28 'Brady list' which meant that Officer Mater had a record and reputation of

1 dishonesty. Plaintiff is informed and believes that one notorious instance was the
2 case of Emmanuel Martinez, who wrongfully spent 5 months in jail, based on his
3 false arrest and false testimony by Officer Mater and another Fullerton officer
4 Miguel Siliceo. It is unknown whether Defendants imposed any discipline on
5 Officer Mater and Officer Siliceo as a result of the Martinez incident. However,
6 Defendants continued to retain and employ Officer Mater until he destroyed his
7 DAR recording of his contact with Dean Francis Gochenour, whom he had arrested
8 and taken into custody, after Mr. Gochenour was found dead in his jail cell.

9 d. On March 17, 2010 several Fullerton police officers, including
10 HAMPTON, battered, beat and abused Andrew Trevor Clarke. Fullerton officers
11 broke Mr. Clarke's finger resulting in permanent injury and stole his money.
12 Although the department claimed that it conducted an extensive investigation, it
13 "sustained" Mr. Clarke's personnel complaint against only one officer, Cary Tong
14 and held it "unfounded" as to the rest, including HAMPTON. It is unknown what
15 discipline, if any, Defendants imposed on Officer Tong.

16 e. On June 27, 2010, HAMPTON battered Edward M. Quinonez causing
17 a head injury and filed a false police report to support his false arrest of Mr.
18 Quinonez for P.C. 647 (f) "drunk in public" after a perceived "contempt of cop."
19 HAMPTON ignored Mr. Quinonez' repeated pleas for a breathalyzer so he can
20 prove his innocence. Ultimately a test administered at the station revealed a 0.00
21 alcohol level. The District Attorney refused to file charges. Mr. Quinonez filed a
22 personnel complaint with the Department the day after his false arrest, and over 2
23 years after the incident, Mr. Quinonez has not received a response from the CITY.

24 f. On October 27, 2010 HAMPTON battered Veth Mam and in
25 conspiracy with several other Fullerton officers, filed false reports to support and
26 cover up Mr. Mam's false arrest by causing him to be charged for violating P.C. §
27 148 "resisting arrest"; § 241 "assault"; and § 243 "battery on a peace officer".
28 Despite videotape evidence showing HAMPTON's unjustified use of force, no

1 officer reported that HAMPTON used force on Mr. Mam. Mr. Mam endured
2 almost a year with pending criminal charges. It was only after a jury found Mr.
3 Mam "not guilty" that the acting Fullerton police chief Kevin Hamilton admitted
4 that the officers "arrested the wrong man" and opened an internal investigation.
5 Close to a year later, no results from the internal investigation are forthcoming.

6 g. On February 11, 2011, Fullerton officer A. Cicciarelli went to
7 Matthew Goggans' home on a noise disturbance call and after directing Mr.
8 Goggans to step out on his porch, falsely arrested Mr. Goggans for PC 647 (f) for
9 "drunk in public" and PC 148(a)(1) "resisting arrest" after a perceived "contempt
10 of cop." The District Attorney refused to file charges.

11 17. The individual officer Defendants' actions and omissions during their
12 encounter with KELLY on July 5, 2011 were a product of the reckless and callous
13 indifference by the CITY, its Police Chief and departmental supervisory personnel to
14 citizens' rights, and specifically KELLY's constitutional rights to be safe and secure in
15 his person. The actions and omissions by Defendants, and each of them, caused KELLY
16 to lose his life, and Plaintiff RON THOMAS to lose his son.

17 PARTIES

18 18. Decedent, KELLY JAMES THOMAS, ("KELLY"), at all times herein
19 mentioned, was a resident of the County of Orange, State of California. He was
20 mentally ill and homeless. He died on July 10, 2011 after causes of action alleged herein
21 arose in his favor. KELLY would have been the plaintiff in this action if he had lived.

22 19. RON THOMAS is the natural father of decedent KELLY JAMES
23 THOMAS and is his surviving heir-at-law. Plaintiff is the successor-in-interest and
24 succeeds to KELLY's causes of action against Defendants named herein because there is
25 no personal representative of the estate of KELLY JAMES THOMAS. Plaintiff has
26 executed and filed the declaration under penalty of perjury required by Code of Civil
27 Procedure Section 377.32.

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1 20. At all times herein mentioned, Plaintiff RON THOMAS is a resident of the
2 County of Orange, State of California.

3 21. At all times herein mentioned, Defendants MICHAEL SELLERS, Chief of
4 Police individually and as a peace officer, PATRICK McKINLEY, individually and as
5 Fullerton City Councilmember and former Chief of Police, MANUEL ANTHONY
6 RAMOS Badge Number Unknown, individually and as a peace officer; JOSEPH
7 WOLFE Badge Number Unknown, individually and as a peace officer; JAY PATRICK
8 CICINELLI Badge Number Unknown, individually and as a peace officer; KENTON
9 HAMPTON Badge Number 1337, individually and as a peace officer; JAMES
10 BLATNEY Badge Number Unknown, individually and as a peace officer; SGT. KEVIN
11 CRAIG Badge Number Unknown, individually and as a peace officer; and DOES 1-50,
12 inclusive, and each of them, were employees of the City of Fullerton and the Fullerton
13 Police Department.

14 22. Defendant SELLERS was at all relevant times, the highest-ranking law
15 enforcement policymaker for the City of Fullerton. Defendant McKINLEY was at all
16 relevant times, a member of the CITY's City Council and former Chief of Police of the
17 CITY's Police Department, with the power to hire and fire, discipline and supervise
18 officers of the Fullerton Police Department.

19 23. Defendants DOES 26 through 50 were each duly appointed qualified and
20 acting ranking officers, officials and employees of the Fullerton Police Department and
21 Defendant CITY, also charged by law with the supervision, management, control,
22 operation and administration of the Fullerton Police Department and with the
23 responsibility, control, supervision, training, employment, assignment, discipline and
24 removal of peace officers of the Fullerton Police Department and CITY.

25 24. At all relevant times, each individual Defendant was acting within the
26 course and scope of their employment as police officers of the CITY, and under the
27 color of state law, and as the employee, agent and representative of each and every other
28 Defendant.

1 25. Defendant CITY OF FULLERTON (hereinafter referred to as "CITY") is
2 and at all times herein mentioned has been a public entity and an incorporated city duly
3 authorized and existing as such in and under the laws of the State of California; and at all
4 times herein mentioned, Defendant CITY has possessed the power and authority to adopt
5 policies and prescribe rules, regulations and practices affecting the operation of the
6 Fullerton Police Department, and particularly said Department's Patrol, Internal
7 Investigations, Training and Personnel Divisions and other operations and subdivisions
8 presently unidentified to Plaintiff, and their tactics, methods, practices, customs and
9 usages related to their dealings with the mentally ill and the homeless, the use and
10 deployment of dangerous weapons, the use of force, the powers of arrest by its rank and
11 file, internal investigations, personnel supervision and meaningful records review and
12 maintenance.

13 26. Plaintiff is informed and believes and thereon alleges that each of the
14 Defendants designated as a DOE is intentionally and negligently responsible in some
15 manner for the events and happenings herein referred to, and thereby proximately caused
16 injuries and damages as herein alleged. The true names and capacities of DOES 1
17 through 50, inclusive, and each of them, are not now known to Plaintiff who therefore
18 sues said Defendants by such fictitious names, and Plaintiff will seek leave to amend this
19 complaint to show their true names and capacities when the same have been ascertained.

20 27. Defendants, and each of them, did the acts and omissions hereinafter alleged
21 in bad faith and with knowledge that their conduct violated well established and settled
22 law.

23 **INCORPORATION BY REFERENCE**

24 28. Plaintiffs refer to and replead each and every allegation contained in
25 paragraphs 1 through 27, inclusive, of this Complaint, and by this reference incorporates
26 the same into each cause of action herein.

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1 deliberate indifference to the risk of death to KELLY. By reason thereof, Plaintiff seeks
2 punitive and exemplary damages from Defendants individually, (except the CITY) in an
3 amount according to proof.

4 **SECOND CAUSE OF ACTION**

5 **(NEGLIGENCE – Survival Action)**

6 **(By Plaintiff RON THOMAS as Successor-in-Interest of KELLY THOMAS**

7 **Against All Defendants)**

8 34. On or about the dates, time and places alleged herein, Defendants were
9 charged with the duty to protect and serve the citizens of Fullerton, including the
10 mentally ill, and to ensure their safety. Plaintiff is informed and believes that Defendants
11 had received training as police officers to use good judgment and use sound and
12 reasonable police practices toward that end. Defendants also owed the public, including
13 KELLY, the duty not to cause harm.

14 35. Defendants, and each of them, breached these duties by injuring KELLY and
15 causing his death, and in doing so they negligently, carelessly and/or recklessly failed to
16 employ reason and restraint, effective communication techniques, proper control holds,
17 and other similar methods inherent in their employment and training that were available
18 to them, to ensure KELLY's safety. To wit, Defendants RAMOS and WOLFE used
19 improper tactics against a person who they knew or should have known was mentally ill
20 and escalated the need to use force, and increased the use of force under situations likely
21 to exacerbate the situation instead of controlling it and protecting KELLY's safety.

22 36. As a legal result of Defendants' acts and omissions as heretofore described,
23 KELLY died.

24 37. As a legal result of Defendants' acts and omissions as heretofore described,
25 Plaintiff's decedent KELLY suffered serious injuries and incurred medical bills for health
26 care services necessary to try and save his life, until he died on July 10, 2011. As a
27 further legal result of the aforesaid acts and omissions by Defendants and KELLY's
28 death, Plaintiff has incurred funeral and burial expenses in an amount according to proof.

38. The aforementioned acts and omissions of Defendants were committed by each of them knowingly, willfully and maliciously, with the intent to harm, injure, vex, harass and oppress KELLY with conscious disregard to KELLY's known rights and deliberate indifference to the risk of death to KELLY. By reason thereof, Plaintiff seeks punitive and exemplary damages from Defendants, and each of them, (except Defendant CITY) in an amount as proved.

THIRD CAUSE OF ACTION

(WRONGFUL DEATH, C.C.P. § 377.60(b))

(By Plaintiff RON THOMAS Individually Against All Defendants)

39. At or about the aforementioned time, date and place, Defendant police officers intentionally, negligently and recklessly threatened, assaulted, battered and beat, and thereby killing his son KELLY.

40. On and for some time before July 5, 2011, Defendants CITY, SELLERS, and DOES 26 through 50, employed, retained, trained, supervised, assigned, controlled Defendants RAMOS, WOLFE, CICINELLI, HAMPTON, BLATNEY, CRAIG, and DOES 1 through 25, who Defendants CITY FULLERTON, MICHAEL SELLERS, and DOES 26 through 50, and each of them, at all times material herein, knew or reasonably should have known had dangerous and dishonest propensities for abusing their authority and for using excessive and punitive force and violence and for falsifying their accounts and reports of their actions, especially where force was used by said defendant officers. Defendants CITY, SELLERS and DOES 26 through 50 are vicariously liable for the acts of Defendants RAMOS, WOLFE, CICINELLI, HAMPTON, BLATNEY, CRAIG, and DOES 1 through 25 committed in the course and scope of their employment as Fullerton police officers.

41. By reason of the aforesaid acts and omissions of defendants, Plaintiff has been and will forever be deprived of KELLY's love, affection, society, companionship, and support, all to Plaintiff's damages according to proof at trial.

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1 42. As a further legal result of the aforesaid acts and omissions by Defendants
2 and the death of decedent, Plaintiff has incurred funeral and burial expenses in an amount
3 according to proof.

4 **FOURTH CAUSE OF ACTION**

5 **(VIOLATION OF CIVIL RIGHTS - 42 U.S.C. § 1983 Unreasonable Seizure,**
6 **Excessive and Deadly Force- Survival Claim)**

7 **(By Plaintiff RON THOMAS as Successor-In-Interest of KELLY J. THOMAS**
8 **Against Defendants RAMOS, WOLFE, CICINELLI, HAMPTON, BLATNEY,**
9 **CRAIG and DOES 1 through 25, inclusive.)**

10 43. Commencing at or about the aforementioned date and place, without cause
11 or justification, and acting under color of law, Defendants RAMOS, WOLFE,
12 CICINELLI, HAMPTON, BLATNEY, CRAIG, and DOES 1 through 25 and each of
13 them, intentionally and maliciously deprived KELLY THOMAS of rights secured to him
14 by the First, Fourth, and Fourteenth Amendments to the United States Constitution in that
15 Defendants and each of them, subjected Plaintiff to unreasonable, unnecessary and
16 excessive force during his arrest even though no strong government interest compelled
17 the need for the officers to use force, especially the use of deadly force, including but not
18 limited to doing the following:

19 a. Defendants used deadly force even though KELLY had not
20 committed a serious crime, or any crime at all, and even though he did not pose a
21 threat of death or serious physical injury to the officers or to others;

22 b. The force used was deadly because head strikes and broken nasal
23 bones are reasonably likely to cause death when applied under certain
24 circumstances, as they were in KELLY's case;

25 c. The force used was deadly because pressing weight on a person who
26 was already struggling to breathe and was begging for air was reasonably likely to
27 cause death, as it did in KELLY's case;

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1 d. RAMOS threatened and inflicted violence against KELLY, in
2 retaliation for KELLY's exercise of his First Amendment right to free speech;

3 e. RAMOS assaulted and battered KELLY by grabbing KELLY's neck
4 and shoulder and pulling out his baton ready to strike KELLY even though
5 KELLY had not made any aggressive moves that threatened officer safety.

6 f. WOLFE pulled and swung his baton at KELLY even though KELLY
7 had his hands up and was standing. WOLFE struck KELLY with his baton even
8 though KELLY had not made any aggressive or threatening move against RAMOS
9 or WOLFE.

10 g. WOLFE continuously pressed his body weight on KELLY and
11 ignored KELLY's repeated pleas that he could not breathe.

12 h. WOLFE used his knees to strike KELLY and repeatedly struck
13 KELLY in the head and face with his elbow while KELLY was on the ground.

14 i. Defendants RAMOS, WOLFE, CICINELLI, and CRAIG, continued
15 to press their combined body weight on KELLY for close to 10 minutes,
16 repeatedly ignoring KELLY's pleas that he could not breathe, and which should
17 have alerted all of the Defendants of the risk of causing respiratory distress.

18 k. CICINELLI repeatedly fired his Taser, even though KELLY is on the
19 ground with three other officers on top of him.

20 l. CICINELLI used deadly force by using his Taser gun as an impact
21 weapon to strike KELLY repeatedly in the face while KELLY was on the ground.

22 m. Despite having more than sufficient time to do so, HAMPTON failed
23 to intervene to prevent RAMOS, WOLFE and CICINELLI's continued use of
24 excessive and deadly force against KELLY. HAMPTON ignored KELLY'S
25 repeated pleas that he could not breathe. HAMPTON instead assisted the other
26 officers in continuing to use excessive and deadly force including the Taser, and
27 assisted the officers as they continued to press their combined weight on KELLY.

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1 n. CRAIG added his own body weight to press on KELLY's body and
2 ignored KELLY's repeated pleas that he could not breathe. CRAIG failed to
3 intervene by not instructing and not directing his subordinate officers to make sure
4 KELLY can clear his airway so as to prevent asphyxia.

5 o. HAMPTON and BLATNEY applied the hobble device to restrain
6 KELLY, which increased KELLY's risk of respiratory distress from positional
7 asphyxia, and they failed to intervene by making sure KELLY can clear his airway.

8 44. At all times during the event described herein, Defendants RAMOS,
9 WOLFE, CICINELLI, HAMPTON, CRAIG, BLATNEY assisted each other in
10 performing the various actions described and lent their physical presence and support and
11 authority of their office to each other during the event and engaged in a conspiracy to
12 cover up the excessive use of force, by among other things, claiming that KELLY was
13 fighting them, that they sustained injuries inflicted by KELLY, by claiming that KELLY
14 was on drugs.

15 45. The unreasonable use of deadly force by Defendants RAMOS, WOLFE,
16 CICINELLI, HAMPTON, CRAIG, BLATNEY and DOES 1 through 25 deprived
17 KELLY of his right to be secure in his person against unreasonable searches and seizures
18 as guaranteed to KELLY under the Fourth Amendment to the United States Constitution
19 and applied to state actors by the Fourteenth Amendment.

20 46. As a legal result of Defendants' acts and omissions as heretofore described,
21 Plaintiff's decedent KELLY suffered extreme pain and suffering and eventually suffered
22 the loss of his life. KELLY suffered serious physical injuries and incurred medical bills
23 for health care services necessary to try and save his life, until he died on July 10, 2011.

24 47. The aforementioned acts and omissions of Defendants were committed by
25 each of them knowingly, willfully and maliciously, with the intent to harm, injure, vex,
26 harass and oppress KELLY, with a conscious disregard of KELLY's constitutional rights
27 and conscious and deliberate indifference to the risk of death to KELLY, and by reason
28

1 thereof, Plaintiff seeks punitive and exemplary damages from Defendants, and each of
2 them, (except Defendant CITY) in an amount as proved.

3 **FIFTH CAUSE OF ACTION**

4 **(VIOLATION OF CIVIL RIGHTS - 42 U.S.C. § 1983 – Substantive Due Process)**
5 **(By Plaintiff RON THOMAS Individually Against Defendants RAMOS, WOLFE,**
6 **CICINELLI, HAMPTON, BLATNEY, CRAIG and DOES 1 through 25, inclusive)**

7 48. RON THOMAS has a cognizable interest under the Substantive Due Process
8 Clause of the Fourteenth Amendment of the United States Constitution to be free from
9 state actions that deprive him of life, liberty or property in such a manner as to shock the
10 conscience, including but not limited to, unwarranted state interference in Plaintiff's
11 familial relationship with his son, KELLY.

12 49. As a result of the excessive force and failure to intervene by Defendants
13 RAMOS, WOLFE, CICINELLI, HAMPTON, BLATNEY, CRAIG, and DOES 1
14 through 25, KELLY died. Defendants interfered with and permanently deprived Plaintiff
15 RON THOMAS of his constitutional right to a familial relationship with KELLY.

16 50. As a further legal result of the aforesaid acts and omissions by Defendants
17 and KELLY's death, Plaintiff has incurred funeral and burial expenses in an amount
18 according to proof.

19 51. Defendants' actions, along with other undiscovered conduct, shock the
20 conscience, and they acted with conscious and deliberate indifference to KELLY's and
21 RON THOMAS' constitutional rights, and with the purpose of depriving them of such
22 rights, unrelated to any legitimate law enforcement objective.

23 52. Defendants, and each of them, committed the aforementioned acts and
24 omissions knowingly, willfully and maliciously, and with the intent to harm, injure, vex,
25 harass and oppress Plaintiff with conscious disregard of Plaintiff's known rights and by
26 reasons thereof, Plaintiff seeks punitive and exemplary damages from Defendants
27 individually, (except CITY) in an amount according to proof.

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(SUPERVISOR LIABILITY UNDER 42 U.S.C. § 1983 – Survival Claim)
(By Plaintiff RON THOMAS as Successor-in-Interest of KELLY J. THOMAS
Against Defendant CRAIG)

54. At all times, Defendant Sgt. CRAIG knew that KELLY had sustained massive head and facial trauma and was bleeding heavily from his nose. Defendant Sgt. CRAIG also knew that KELLY could not breathe. Despite this knowledge, and with willfull blindness to the excessive force already inflicted on KELLY, Defendant CRAIG acted with conscious and deliberate indifference to the risk of death to KELLY and instead of controlling, directing and otherwise terminating his subordinates' conduct, CRAIG assisted his subordinates in putting more weight on KELLY. Defendant CRAIG failed to and did not instruct his subordinate officers to keep KELLY's airway open so that KELLY could breathe. Instead Defendant CRAIG's assistance and instructions contributed to KELLY suffering respiratory distress due to compression and positional asphyxia. Defendant CRAIG so grossly mismanaged the situation and failed to remedy the wrong, such that even though CRAIG arrived while KELLY was still alive, CRAIG did not take steps to prevent KELLY's death.

COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

1 56. As a legal result of Defendant CRAIG's actions and omissions as heretofore
2 described CRAIG deprived KELLY of his right to be secure in his person against
3 unreasonable searches and seizures as guaranteed to KELLY under the Fourth
4 Amendment to the United States Constitution and applied to state actors by the
5 Fourteenth Amendment.

6 57. As a legal result of Defendant CRAIG's acts and omissions as heretofore
7 described, KELLY suffered extreme pain and suffering and eventually suffered the loss
8 of his life. KELLY suffered serious physical injuries and incurred medical bills for
9 health care services necessary to try and save his life, until he died on July 10, 2011. As
10 a further legal result of the aforesaid acts and omissions by Defendants and KELLY's
11 death, Plaintiff has incurred funeral and burial expenses in an amount according to
12 proof.

13 58. Defendant CRAIG committed the aforementioned acts and omissions
14 knowingly, willfully and maliciously, and with the intent to harm, injure, vex, harass and
15 oppress KELLY with conscious disregard of KELLY's known rights and by reasons
16 thereof, Plaintiff seeks punitive and exemplary damages from Defendant CRAIG
17 individually, in an amount according to proof.

18 **SEVENTH CAUSE OF ACTION**

19 **(UNLAWFUL CUSTOM AND PRACTICE UNDER 42 U.S.C. § 1983)**

20 **(By Plaintiff RON THOMAS Individually and as Successor-in-Interest of KELLY J.**
21 **THOMAS Against Defendants CITY, SELLERS, McKINLEY and DOES 26**
22 **through 50, inclusive.)**

23 59. Plaintiff is informed and believes, and based thereon alleges, that on July 5,
24 2011, and for some time prior thereto, Defendants CITY, SELLERS, McKINLEY and
25 DOES 26 through 50, inclusive, with deliberate indifference towards the civil rights of
26 persons residing in or passing through the City of Fullerton, knowingly and willfully did
27 maintain, enforce, and apply a custom, practice, policy and usage tending to encourage,
28 promote, sanction, tolerate and ratify the abuse of authority, and the use of unreasonable,

1 unnecessary and excessive force by law enforcement personnel they employed in the
2 Fullerton Police Department.

3 60. At all times herein mentioned, Defendants SELLERS, McKINLEY and
4 DOES 26 through 50, and each of them, were employees acting under the CITY's
5 direction and control, who knowingly and intentionally promulgated, maintained,
6 applied, enforced and suffered the continuation of policies, customs, practices and usages
7 in violation of the First, Fourth and Fourteenth Amendments to the United States
8 Constitution, which customs, policies, practices and usages at all times herein mentioned
9 required and encouraged the employment, deployment and retention of persons as peace
10 officers who have demonstrated their brutality, dishonesty, and numerous other serious
11 abuses of their powers as peace officers in the employment of the CITY.

12 61. Defendant CITY, SELLERS, McKINLEY and DOES 26 through 50,
13 inclusive, have demonstrated their deliberate indifference to widespread police abuses by
14 failing and refusing to impartially investigate personnel complaints, failing to discipline
15 or prosecute peace officers who commit acts of felonious dishonesty and crimes of
16 violence.

17 62. The unconstitutional policies, practices or customs promulgated, sanctioned
18 or tolerated by Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
19 include, but are not limited to:

20 (a) hiring and retaining law enforcement personnel, including Defendants
21 RAMOS, WOLFE, CICINELLI, HAMPTON, BLATNEY, CRAIG, and DOES 1-
22 25, who lack sufficient mental, emotional and intellectual character, temperament,
23 capacity or disposition to exercise sound judgment when exercising their authority
24 as police officers;

25 (b) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
26 had knowledge, prior to and since this incident, of repeated allegations against its
27 officers of abuse and assaultive misconduct toward detainees and arrestees.
28 Specifically, CITY, SELLERS, McKINLEY and DOES 26 through 50 knew

1 Defendants had in the past committed acts of police abuse, dishonesty and
2 prevarication;

3 (c) Despite the CITY, SELLERS, McKINLEY and DOES 26 through
4 50's knowledge of abuse and misconduct, it failed or refused to enforce established
5 administrative procedures, to ensure the safety of detainees and arrestees;

6 (d) Defendants CITY SELLERS, McKINLEY and DOES 26 through 50
7 failed to adequately train and educate officers in the use of reasonable and proper
8 force and failed to enforce the department's written regulations with respect to uses
9 of force;

10 (e) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50,
11 encouraged, condoned, failed to enforce the department's written regulations with
12 respect to the laws and procedures of arrest, and refused to re-train its officers who
13 arrested citizens without probable cause and who used arrests as punishment for
14 perceived "contempt of cop" and for citizens' exercise of their First Amendment
15 rights.

16 (f) Defendant CITY, SELLERS, McKINLEY and DOES 26 through 50
17 failed to adequately monitor and supervise the actions of officers under their
18 control and guidance;

19 (g) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
20 refused to competently and impartially investigate allegations of abuse and
21 misconduct alleged to have been committed by Fullerton Police Department
22 officers;

23 (h) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
24 refused to adequately discipline individual officers and employees found to have
25 committed similar acts of abuse and misconduct;

26 (i) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
27 rewarded officers who displayed aggressive and abusive behavior towards
28 detainees and arrestees;

1 (j) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
2 reprimanded, threatened, intimidated, demoted and fired officers who reported acts
3 of abuse by other officers;

4 (k) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
5 condoned and encouraged a conspiracy of silence among their employees for the
6 purpose of concealing and furthering wrongful and illegal conduct by their
7 employees;

8 (l) Defendants CITY, SELLERS, McKINLEY and DOES 26 through 50
9 fostered and encouraged an atmosphere of lawlessness, abuse and unconstitutional
10 misconduct, as to encourage their police officers to believe that improper arrest of
11 residents of the City of Fullerton or persons present therein, the excessive and
12 improper use of force, the submission of false police reports, and the commission
13 of perjury was permissible and would be tolerated, and to believe that unlawful
14 acts of falsification of evidence and perjury would be overlooked without
15 discipline or other official ramifications. By July 2011 and thereafter, these
16 represented the unconstitutional policies, practices and customs of the CITY.

17 63. Said policies, procedures, customs and practices also called for the CITY
18 and its Police Department not to discipline, prosecute, or objectively and/or
19 independently investigate or in any way deal with, or respond to, known incidents and
20 complaints of excessive and improper use of force, false arrest, falsification of evidence,
21 the preparation of false police reports to justify, cover up and conceal wrongful conduct
22 by officers of the Fullerton Police Department. Defendants demonstrated their
23 deliberate indifference to the unconstitutional conduct by their failure to adequately train
24 and more closely supervise or re-train officers and/or discipline or recommend
25 prosecution of those officers who in fact improperly used such force, falsified evidence,
26 submitted false and misleading police reports, and/or committed perjury.

27 64. Said policies, procedures, customs and practices called for and led to the
28 refusal by Defendants, and each of them, to investigate complaints of previous incidents

1 of excessive and improper use of force, the filing of false police reports to conceal such
2 misconduct, the falsification of evidence and perjury and instead, officially claim that
3 such incidents were justified and proper.

4 65. Said policies, procedures, customs and practices of Defendants, and each of
5 them, evidenced a deliberate indifference to the violations of the constitutional rights of
6 Plaintiff and his son KELLY. This indifference was manifested by the failure to change,
7 correct, revoke or rescind said policies, procedures, customs and practices in light of
8 prior knowledge by Defendants, and each of them, and their subordinate policymakers,
9 of indistinguishably similar incidents of excessive and improper use of force,
10 falsification of evidence, submission of false police reports and perjury.

11 66. Defendants, and each of them, demonstrated their deliberate indifference to
12 the civil rights of minority groups and other victims of the Fullerton Police Department's
13 unlawful arrests, falsified evidence, false and misleading police reports and false and
14 perjurious testimony by ignoring the history and pattern of prior civil lawsuits alleging
15 civil rights violations arising from such misconduct and the related payment of damages
16 to such individuals.

17 67. Defendants, and each of them, demonstrated their deliberate indifference by
18 an absence of or by maintenance of an inadequate system of tort claims tracking, use-of-
19 force tracking, and maintenance of an inadequate system of officer discipline and
20 independent and objective investigation by the CITY and its Police Department which
21 failed to identify and investigate instances of false and unlawful arrests, falsification of
22 evidence, submission of false police reports and perjury.

23 68. Defendants, and each of them, demonstrated their deliberate indifference to
24 the civil rights of minority groups and the weaker members of society, especially the
25 mentally ill and homeless, by tolerating and sanctioning Fullerton police officers' abuse
26 of the rights of the mentally ill and homeless by subjecting them to harassment,
27 intimidation, false arrest and destruction of their personal property, thus fostering an
28 atmosphere that encouraged its officers to disregard the rights of the mentally ill and

1 homeless based on the view that the mentally ill and homeless did not deserve respect or
2 protection;

3 69. Other systemic deficiencies which indicated and continue to indicate, a
4 deliberate indifference to civil rights violations by officers of the Fullerton Police
5 Department include:

6 a. preparation of investigative reports designed to vindicate and/or
7 justify excessive and improper use of force;

8 b. preparation of investigative reports which uncritically rely solely on
9 the word of Fullerton police officers involved in unlawful arrests or improper use of
10 force and which systematically fail to credit testimony by non-officer witnesses;

11 c. preparation of investigative reports which omit factual information
12 and physical evidence which contradicts the accounts of the officers involved;

13 d. failure to maintain centralized department-wide systems for the
14 tracking and monitoring of tort claims and lawsuits alleging false arrests, excessive and
15 improper use of force, planting of evidence, perjury, abuse of authority, and other
16 similar misconduct by individual officers so as to identify those officers who engage in a
17 pattern of abuse of police authority and police misconduct.

18 70. Defendants, and each of them, also maintained a system of grossly
19 inadequate training pertaining to lawful arrests, reasonable use of force, police ethics,
20 the law pertaining to searches and seizures, testifying in trial and perjury, the collection
21 of evidence, and the preparation of police reports.

22 71. Defendants, and each of them, demonstrated their deliberate indifference
23 the victims of its Police Department's unlawful arrests, excessive and improper uses of
24 force, and perjury by failing to implement an officer discipline system which would
25 conduct meaningful and independent investigations of citizen complaints of excessive
26 and improper use of force, falsified evidence, evidence tampering, authoring and filing
27 of false and misleading police reports, and the presentation of false testimony at trial.

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1 72. Defendants, and each of them, demonstrated their deliberate indifference to
2 the victims of its Police Department's excessive and improper uses of force, falsified
3 evidence, false arrests, false and misleading police reports and false and perjurious
4 testimony by their implementation of a practice and custom within the Fullerton Police
5 Department of permitting their officers to engage in unlawful activities while on duty
6 such as assaults, batteries, and other crimes of moral turpitude, including but not limited
7 to, the following incidents:

8 a. In 2008, Defendants knew of at least seven female victims of sexual
9 assault and battery by Fullerton officer Albert Rincon and did not terminate his
10 employment until after a federal lawsuit exposed Defendants' deliberate
11 indifference to the victims by its utter failure to supervise, monitor and discipline
12 Rincon. Defendants acted only after a federal district court judge, who had
13 examined the evidence, issued a scathing opinion against the CITY and its police
14 department for its "total" "failure to sufficiently enforce the DAR and pat-down
15 policies" because Rincon's complete disregard of mandatory department policy
16 "went completely undetected, or deliberately ignored" by the CITY; that the
17 CITY's "failure to investigate or punish sexual harassment allegations" despite the
18 "sheer volume of incidents" combined with the CITY's "most shocking" and
19 "weak" "reprimand" of Rincon in response to the citizen allegations, demonstrated
20 that the CITY was "complicit" in Rincon's sexual assaults on women he arrested,
21 and "that the City did not care about what its officers did to women during arrest."
22 Initially the CITY denied liability and forced the lawsuit to be filed, but one week
23 after the district court's finding, the CITY settled the civil case and only then,
24 finally made a move to terminate Rincon's employment.

25 b. On August 17, 2008, several Fullerton officers including Officer Perry
26 Thayer and Officer Anthony Diaz, assaulted, battered and terrorized Christopher
27 Spicer-Janku and filed a false arrest report claiming that Mr. Spicer-Janku was
28 "drunk in public." No charges were filed. Although Mr. Spicer-Janku filed a

1 personnel complaint against the officers, Mr. Spicer-Janku never received any
2 response from the CITY as to whether it even investigated the officers involved.

3 c. In January 2009, Fullerton officer Christopher Wren was charged with
4 battery for using force and violence on another, and later convicted of false
5 imprisonment after a plea deal. That same year Officer Wren was sued together
6 with Officer Rincon and Defendant CITY for falsifying one of Officer Rincon's
7 sexual battery victims' breath test results, in conspiracy with Officer Rincon. It is
8 presently unknown to Plaintiff what discipline if any, Defendants imposed on
9 Officer Wren as a result of these incidents but Plaintiff is informed and believes
10 that Officer Wren continues to be employed by Defendants.

11 d. On October 29, 2009 Defendant CICINELLI falsely arrested Angel
12 Baltazar for a violation of Health & Safety Code § 11550 (a) "under the influence."
13 The District Attorney refused to file charges.

14 e. From at least 2010, despite Defendants' knowledge that Fullerton
15 officer Vincent Mater had a propensity for falsifying evidence and testimony,
16 Defendants continued to retain and employ Officer Mater. Defendants continued
17 to retain and employ Officer Mater despite as he was on the district attorney's
18 'Brady list' which meant that Officer Mater had a record and reputation of
19 dishonesty. Plaintiff is informed and believes that one notorious instance was the
20 case of Emmanuel Martinez, who wrongfully spent 5 months in jail, based on false
21 arrest and false testimony by Officer Mater and another Fullerton officer Miguel
22 Siliceo. It is unknown whether Defendants imposed any discipline on Officer
23 Mater and Officer Siliceo as a result of the Martinez incident. However,
24 Defendants continued to retain and employ Officer Mater until he destroyed his
25 DAR recording of his contact with Dean Francis Gochenour, who he had arrested
26 and taken into custody, after Mr. Gochenour was found dead in his jail cell.

27 f. On March 17, 2010 several Fullerton police officers, including
28 HAMPTON, battered, beat and abused Andrew Trevor Clarke. Fullerton officers

1 broke Mr. Clarke's finger resulting in permanent injury and stole his money.
2 Although the department claimed that it conducted an extensive investigation, it
3 "sustained" Mr. Clarke's personnel complaint against only one officer, Cary Tong
4 and held it "unfounded" as to the rest, including HAMPTON. It is unknown what
5 discipline, if any, Defendants imposed on Tong.

6 g. On June 27, 2010, HAMPTON battered Edward M. Quinonez
7 causing a head injury, and filed a false police report to support his false arrest of
8 Mr. Quinonez for P.C. 647 (f) "drunk in public," after a perceived "contempt of
9 cop." Hampton ignored Mr. Quinonez' repeated pleas for a breathalyzer so he can
10 prove his innocence. Ultimately a test administered at the station revealed a 0.00
11 alcohol level. The District Attorney refused to file charges. Mr. Quinonez filed a
12 personnel complaint with the Department the day after his false arrest, and over 2
13 years after the incident, Mr. Quinonez has not received a response from the CITY.

14 h. On October 27, 2010 HAMPTON battered Veth Mam and in
15 conspiracy with several other Fullerton officers, filed false reports to support and
16 cover up Mr. Mam's false arrest by causing him to be charged for violating P.C. §
17 148 "resisting arrest"; § 241 "assault"; and § 243 "battery on a peace officer".
18 Despite videotape evidence, Mr. Mam endured almost a year with pending
19 criminal charges. It was only after a jury found Mr. Mam "not guilty" that the
20 acting Fullerton police chief Kevin Hamilton admitted that the officers "arrested
21 the wrong man" and opened an internal investigation.

22 i. For criminal acts beginning in June 2010, Fullerton officer Todd Alan
23 Major was charged with 17 felony counts of grand theft, commercial burglary,
24 petty theft and forgery before reaching a guilty plea deal and conviction. It is
25 presently unknown to Plaintiff as to whether Defendants have disciplined Officer
26 Major.

27 j. On February 11, 2011, Fullerton officer A. Cicciarelli went to
28 Matthew Goggans' home on a noise disturbance call and after directing Mr.

1 Goggans to step out on his porch, falsely arrested Mr. Goggans for PC 647 (f) for
2 “drunk in public” and PC 148(a)(1) “resisting arrest.” The District Attorney
3 refused to file charges.

4 k. On May 10, 2011 Fullerton officer Kelly Janeth Mejia was arrested
5 and later pled guilty for stealing an iPad at an airport. It is presently unknown to
6 Plaintiff as to whether Defendants have disciplined Officer Mejia.

7 73. The foregoing acts, omissions, and systemic deficiencies are policies and
8 customs of Defendants, and each of them, which caused, permitted and/or allowed under
9 official sanction Defendants RAMOS, WOLFE, CICINELLI, HAMPTON, BLATNEY,
10 CRAIG and DOES 1 through 25, inclusive to believe that excessive and improper uses
11 of force, evidence falsification, false arrests and the filing of false and misleading police
12 reports, and the commission of perjury would not be objectively, thoroughly and/or
13 properly investigated, all with the foreseeable result that defendants’ officers would
14 improperly use force on arrestees, falsify evidence, abuse and improperly punish post-
15 arrest detainees, submit false and misleading police reports, and commit perjury, and
16 thereby violate the civil rights of the citizens of this State with whom said officers would
17 come into contact.

18 74. By reason of the aforesaid policies, customs, practices and usages, Plaintiff
19 RON THOMAS and his decedent KELLY, were deprived of their rights under the First,
20 Fourth, and Fourteenth Amendments to the United States Constitution.

21 75. As a legal result of Defendants’ acts and omissions as heretofore described,
22 Plaintiff’s decedent KELLY suffered extreme pain and suffering and eventually suffered
23 the loss of his life. KELLY suffered serious physical injuries and incurred medical bills
24 for health care services necessary to try and save his life, until he died on July 10, 2011.

25 76. By reason of the aforementioned acts and omissions of Defendants, and each
26 of them, Plaintiff suffered severe mental anguish, emotional distress, and financial losses,
27 all to Plaintiff’s damage in a sum according to proof.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of Tom Bane Civil Rights Act [California Civil Code §51, 51.7, 52, 52.1]**
3 **(By Plaintiff RON THOMAS as Successor-in-Interest of KELLY THOMAS Against**
4 **Defendants RAMOS, WOLFE, CICINELLI, HAMPTON, BLATNEY, CRAIG and**
5 **DOES 1 through 25, inclusive.)**

6 77. At or about the dates, time and places alleged in this Complaint, Defendant
7 police officers, while acting in the course and scope of their employment as Fullerton
8 police officers, and under color of state law, did deprive KELLY of his liberty and rights
9 secured to him by the First, Fourth and Fourteenth Amendments of the United States
10 Constitution, by Article 1, § 13 of the California Constitution and Civil Code § 51.7, to
11 be free from violence and intimidation, in that on or about said date, time and places said
12 Defendant knowingly and willfully, and without a warrant or legal justification and for
13 the purpose of harassing, intimidating, humiliating and inflicting injury, pain and
14 suffering upon KELLY, and on account of KELLY's disability, and said defendant's
15 perception of the same, did assault, batter, beat KELLY all over his head, face and body,
16 subjecting KELLY to threats of violence and unnecessary, unreasonable and excessive
17 force, as said Defendants at all material times knew or reasonably should have known,
18 were all without provocation, warrant, necessity or legal justification, thereby causing
19 serious injuries and resulted in KELLY's death.

20 78. Defendants' acts and omissions deprived Plaintiff RON THOMAS of a
21 continued familial relationship with his son.

22 79. As a legal result of Defendants' acts and omissions as heretofore described,
23 Plaintiff's decedent KELLY suffered serious injuries and incurred medical bills for
24 health care services necessary to try and save his life, until he died on July 10, 2011.

25 80. The aforementioned acts and omissions of Defendants were committed by
26 each of them knowingly, willfully and maliciously, with the intent to harm, injure, vex,
27 harass and oppress KELLY with a conscious disregard of KELLY's constitutional rights
28

1 and by reason thereof, Plaintiff seeks punitive and exemplary damages from Defendants,
2 and each of them, (except Defendant CITY) in an amount as proved.

3
4 **PRAYER**

5 WHEREFORE, Plaintiff prays judgment against Defendants and each of them, as
6 follows:

7 **AS TO EACH CAUSE OF ACTION AS APPLICABLE**

- 8 1. For General damages according to proof;
9 2. For Special damages according to proof;
10 3. For Exemplary damages as provided by law, in an amount to be proved
11 against each individual Defendant;
12 4. For Civil Penalties pursuant to Civil Code § 52.
13 4. For Attorney's Fees pursuant to 42 U.S.C § 1988 and Civil Code §§ 52 and
14 52.1
15 5. For Costs of suit;
16 6. For such other and further relief as the Court may deem proper.

17
18 Dated: July 5, 2012

MARDIROSSIAN & ASSOCIATES, INC.

19 By: 

20 Garo Mardirossian, Esq.

21 Attorneys for Plaintiff RON THOMAS

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff RON THOMAS hereby demands a trial by jury.

24
25 Dated: July 5, 2012

MARDIROSSIAN & ASSOCIATES, INC.

26 By: 

27 Garo Mardirossian, Esq.

28 Attorneys for Plaintiff RON THOMAS